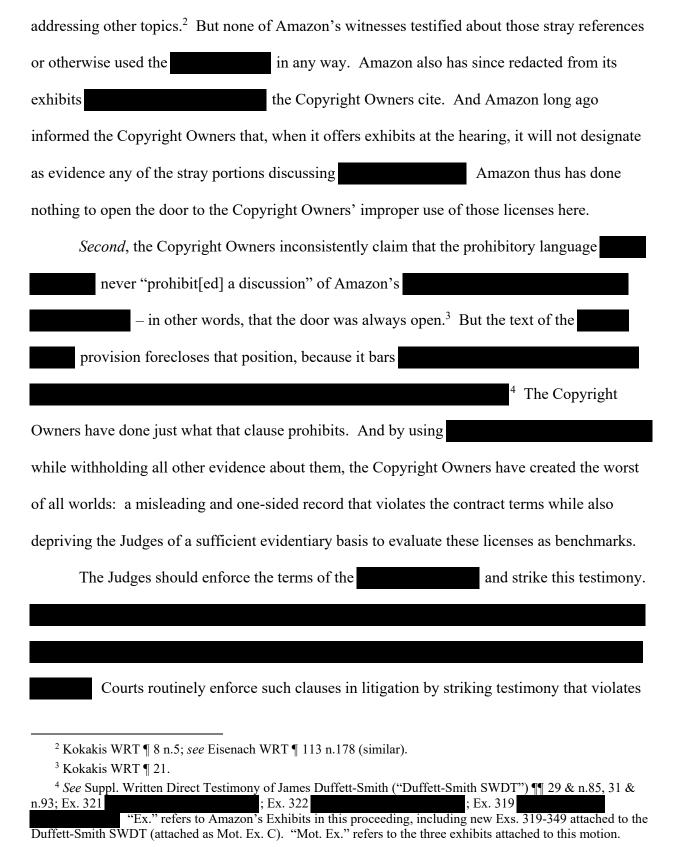
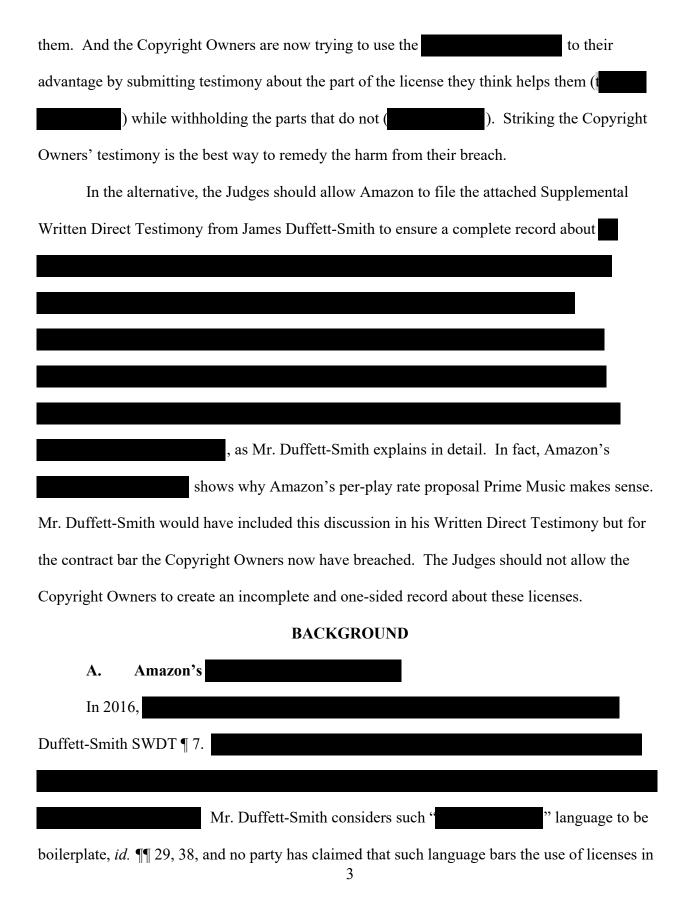
Electronically Filed
Docket: 21-CRB-0001-PR (2023-2027)
Filing Date: 05/05/2022 06:28:52 PM EDT

Before the UNITED STATES COPYRIGHT ROYALTY BOARD Washington, D.C.

In the Matter of:)
DETERMINATION OF RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (Phonorecords IV)	Docket No. 21-CRB-0001-PR (2023-2027)
AMAZON'S MOTION TO STRIKE, OF TO SUBMIT SUPPLEMENTAL TE THE The Judges should strike the portions of the Company of the Compa	STIMONY, CONCERNING
Statement that rely on Amazon's	
Amazon's Written Dire	ect Statement and Written Rebuttal
Statement complied with that contract bar. The Copy	right Owners have breached it.
Neither of the Copyright Owners' inconsisten	t excuses for that breach has merit. First,
they claim Amazon "put into evidence" information a	about because a few
exhibits to Amazon's Written Direct Statement menti	ioned those licenses in passing while

¹ This comprises the last sentence of paragraph 16 and all of paragraphs 21-22 and footnote 5 of the Kokakis WRT, and the portions of paragraphs 113-119 of the Eisenach WRT identified with red strikethrough in Appendix A to this motion.





these proceedings. In <i>Phonorecords III</i> , the Copyright Ov	vners
	5
Duffett	e-Smith SWDT ¶ 8. By September
2018,	<i>Id.</i> ¶ 11. But when the Judges issued
the Phonorecords III Final Determination, which retroacti	vely altered the definition of Service
Provider Revenue for bundles,	Id. ¶ 17. Phonorecords III created
damaging uncertainty for Prime Music,	

 $^{^5}$ Written Statement of David Kokakis \P 80, Dkt. No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*) (Oct. 28, 2016).

⁶ Ex. 342.1,		
	Ex. 342.2,	
⁷ Ex. 345,	_	
⁸ <i>Id.</i> at 1 ⁹ <i>Id.</i> (emphasis added).		

5

B. Amazon's Efforts To Comply With the

Early in *Phonorecords IV*, Amazon conferred with the Copyright Owners to explain its intent to abide by the contract bar that

10 Amazon also asked whether the Copyright Owners were "planning to produce, cite as a benchmark, use as part of an expert analysis, introduce as evidence, or otherwise use in any way in Phono 4," noting that "doing so would be a breach of contract." Other email exchanges ensued – in which Amazon reiterated that it was "not planning to use in any way in our case, because we would view that as a breach of contract" – and the Copyright Owners stated that they, too, did "not intend [to] use the agreements in [their] direct case."
10 Amazon also asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked whether the Copyright Owners to explain its intend to asked to asked

Even still, the Copyright Owners sought discovery about

Claimed their discovery requests were warranted because a few exhibits to Amazon's Written

¹⁰ Mot. Ex. A, August 16, 2021 Email chain from J. Branson to M. Harris at 8-9 (July 23, 2021 Email from J. Branson to B. Semel).

¹¹ *Id.* at 6 (July 28, 2021 Email from J. Branson to B. Semel).

¹² *Id.* at 1 (Aug. 16, 2021 Emails between J. Branson and M. Harris). While the Copyright Owners "reserve[d] all rights to use [the agreements] on rebuttal," Amazon's counsel noted that, because "Amazon will not use them in [its] direct case, we cannot foresee any scenario in which the Copyright Owners' use of the agreements on rebuttal would be . . . consistent with the contract terms." *Id.* The Copyright Owners did not respond further.

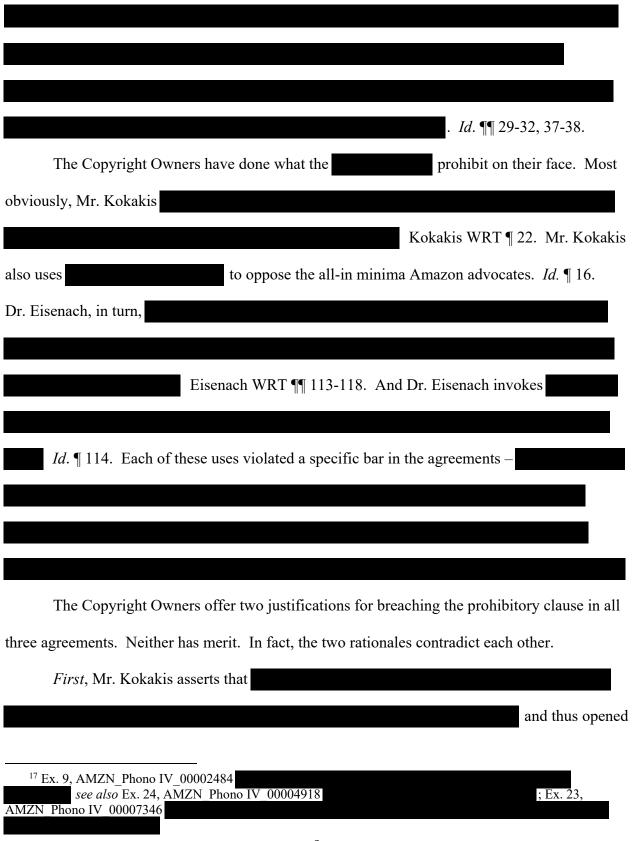
¹³ Written Direct Testimony of James Duffett-Smith ¶ 94 n.66.

Direct Statement addressing other topics – such as			
- contained passing references to 14 Although Amazon disagreed with the			
Copyright Owners' position, it corrected its Written Direct Statement to redact from its exhibits			
those stray references to Amazon made these redactions solely to			
clarify that it was not using in this proceeding. 15			
On March 30, 2022, the Copyright Owners filed a motion objecting, among other things,			
to Amazon's replacement of those exhibits with versions that redacted the references to			
¹⁶ That motion was still pending when the Copyright Owners filed their			
Written Rebuttal Statement. Yet the Copyright Owners engaged in self-help and gave Dr.			
Eisenach the original, unredacted versions of Amazon's exhibits anyway.			
C. The Copyright Owners Offer Rebuttal Testimony About			
Two of the Copyright Owners' witnesses offer rebuttal testimony about the			
Mr. Kokakis, UMPG's Chief Counsel who			
Kokakis WRT ¶¶ 8 n.5, 16, 21-22.			
He acknowledges that			
Id. \P 8 n.5. But he also asserts that			
Amazon's exhibits – before Amazon redacted them –			
<i>Id.</i> ¶ 21. Based on that			
assertion, he testifies about the			

¹⁴ Mot. Ex. B, Ltr. from K. Kim to K. Arora (Jan. 13, 2022) at 6.

¹⁵ Notice of Errata in Amazon's Written Direct Statement (Dec. 10, 2021) ("Notice of Errata"), at 1.

¹⁶ Mem. of Copyright Owners in Supp. Of Mot. to Compel Amazon to Produce Unredacted Documents and Challenge to Amazon's Clawback Notice (Mar. 30, 2022) ("CO Mot. to Compel Unredacted Documents").



the door for the Copyright Owners to do the same. Kokakis WRT ¶ 21. But nothing is "put into evidence" until the hearing. And no Amazon witness testified about any portion of any exhibit mentioning
That distinction is controlling. The Judges' rules recognize that exhibits may contain ancillary information that the sponsoring participant does "not intend[] as evidence." 37 C.F.R. § 351.10(c)(2). At the hearing, participants must "designate[] . . . the matter offered in evidence" in such exhibits, to differentiate them from the "parts . . . [that] are not intended as evidence." *Id.* Amazon's identification of exhibits in its Written Direct Statement thus did not put these documents into evidence at all, much less introduce the stray references to that no witness mentioned.

Moreover, in response to the Copyright Owners' mistaken claim that Amazon had opened the door, Amazon corrected its Written Direct Statement to redact from its exhibits all stray references to

18 Amazon did so solely to clarify that it would not be introducing these portions of the documents as evidence or otherwise relying on them. But the Copyright Owners objected to that as well. Their motion challenging Amazon's redactions was still pending when the Copyright Owners' filed their Written Rebuttal Statement.

That sequence of events puts the lie to Mr. Kokakis's claim that Amazon is

Kokakis WRT ¶ 21. The Copyright Owners made

this same assertion to Amazon in discovery, and Amazon responded by redacting

they claimed Amazon was using as a sword. But the Copyright Owners then objected

¹⁸ Notice of Errata at 1.

¹⁹ See id.

²⁰ See CO Mot. to Compel Unredacted Documents at 19.

to Amazon's redactions as attempts to "suppress information." This was all a ploy. There was
never any confusion about whether Amazon had relied on , and if there were,
Amazon quickly remedied it by redacting the offending references. The Copyright Owners'
objection to that remedy reveals their true interest here: using Amazon's original exhibits -
which did <i>not</i> breach the prohibitory clause – to invent a rationale for their own belated use of
And by sequencing it the way they did, the Copyright Owners now seek to
present the Judges with only superficial, one-sided information about those licenses.
Mr. Kokakis's attempt to rely on
Although he avoids citing it directly, Mr. Kokakis invokes that
Kokakis WRT ¶ 16. That is a veiled reference to
, then, the Copyright Owners lack even the fig
leaf they use to justify their Mr. Kokakis's use of
confirms the broader point: the Copyright Owners' breach of contract was
never about what "Amazon's own exhibits put into evidence." Kokakis WRT ¶ 21.
Second, after arguing that Amazon opened the door, the Copyright Owners also argue
that the door was open all along. They claim the

²¹ Copyright Owners' Mem. in Opp'n to Amazon's Mot. to Compel Production of Documents Concerning the at 2-3 n.2 (Mar. 2, 2022); Copyright Owners' Opp'n to Conditional Mot. to Compel Fin. Documents at 9 n.12 (Mar. 2, 2022).

That argument misreads the contract language				
That provision does not merely				
the Copyright Owners invoke – both — use the				
And Dr. Eisenach's reliance on unredacted versions of				
Amazon's not only reflects a prohibited but also				
uses Amazon internal <i>Id.</i> The contract terms				
prohibit both uses. The assertion that the contracts				
Kokakis WRT ¶ 21, cannot be squared with the text of those provisions.				
Basic contract law confirms the point. Under a venerable "common-law rule of contract				
interpretation," courts typically "construe ambiguous language against the interest of the party				
that drafted it." Mastrobuono v. Shearson Lehman Hutton Inc., 514 U.S. 52, 62-63 (1995); see				
Cole v. Burns Int'l Sec. Servs., 105 F.3d 1465, 1486 (D.C. Cir. 1997) ("It is also accepted that				
ambiguous provisions are construed against the drafter of the contract").				
Duffett-Smith SWDT ¶¶ 29-31, 37.				

Accordingly, if there were any ambiguity (there is not), the Judges should resolve it in Amazon's favor and find that the Copyright Owners' rebuttal submission breaches the agreements.

 $^{^{22}}$ Reply Mem. of Copyright Owners in Further Supp. of CO Mot. to Compel Unredacted Documents at 7 (Apr. 13, 2022); see also Kokakis WRT \P 21.

II. THE JUDGES SHOULD ENFORCE THE CLAUSE THAT AND STRIKE THE TESTIMONY THAT VIOLATES IT

The Judges should enforce that prohibition now. Indeed, where parties contract to exclude evidence from a civil proceeding, courts hold them to their agreement. *See Radio Music License Committee, Inc. ("RMLC") v. Global Music Rts., LLC ("GMR")*, 2019 WL 1437981 (E.D. Pa. Mar. 29, 2019). RMLC was a civil action claiming that GMR – then a newly formed PRO – exercised unlawful monopoly power. *Id.* at *1. The parties had executed an interim license, *id.* at *5-6, which included a provision obligating the parties "not to use the negotiation of or existence of any interim license . . . in any way" in "[1]awsuits," *id.* at *6. Despite that contract bar, RMLC later based complaint allegations on the interim license. The court struck those allegations because they violated the contract's prohibitory clause. *Id.* at *14-16. When GMR moved to strike, the court found "the 'use' limitation in the Interim License Agreement is dispositive on this issue." *Id.* at *15. Thus, "although striking allegations from pleadings are

²³ Ex. 345,

²⁴ See also, e.g., Used-Car-Parts.com, Inc. v. Nusbaum, 2005 WL 2035512, at *6-7 (E.D. Ky. Aug. 22, 2005) (enforcing contract clause that barred contracting parties from using contract or negotiations "to prove or refute any position of any party in any proceeding").

disfavored, the Court [did] so here in the interest of justice." *Id.* at *16. The case for striking the Copyright Owners' testimony is even stronger. Unlike in *RMLC*, the contract bar here

RMLC matches courts' broader practice of enforcing agreements to exclude evidence or limit the scope of litigation. For example, courts enforce parties' stipulations that they will not introduce evidence in a civil proceeding. See, e.g., Conceptus, Inc. v. Hologic, Inc., 2011 WL 13152795, at *4 (N.D. Cal. Sept. 27, 2011) (noting that ruling on motion in limine did "not release" party of "its stipulated agreement not to reference [certain] patents"). Parties can agree by contract to waive arguments or defenses. See, e.g., Studiengesellschaft Kohle, mbH v. Hercules, Inc., 748 F. Supp. 247, 251 (D. Del. 1990) (enforcing written agreement by defendants to waive statute of limitations defense, where "[t]he wording of this agreement appears to have been carefully considered"). Parties can even agree by contract to forgo basic legal rights like the right to a jury trial, see Lehman Bros. Holdings Inc. v. Bethany Holdings Grp., LLC, 801 F. Supp. 2d 224, 230-31 (S.D.N.Y. 2011) (enforcing jury waiver provision), or the right to pursue adjudication in their chosen forum, see Cheney v. IPD Analytics, LLC, 583 F. Supp. 2d 108, 120 (D.D.C. 2008) (enforcing forum selection clause). Here, the relief Amazon seeks is much less onerous.

Amazon simply asks the Judges to hold the Copyright Owners to that language.

Striking the Kokakis and Eisenach rebuttal testimony is a proper remedy for the Copyright Owners' breach. Specific performance is the normal contract remedy where, as here, monetary damages cannot rectify the breach. *See* Restatement (Second) of Contracts § 357 (1981). For example, courts often order specific performance to remedy breach of a settlement agreement, by dismissing lawsuits that violate the agreement. *See, e.g., Shoshone-Bannock*

Tribes of Fort Hall Reservation v. Bernhard, 486 F. Supp. 3d 61, 68 (D.D.C. 2020) ("An action to enforce a settlement agreement is, at bottom, an action seeking the equitable remedy of specific performance of a contract."). The same remedy applies, as in *RMLC*, when a party breaches an agreement not to introduce particular evidence. *See* 2019 WL 1437981, at *16.

Those principles support striking the Copyright Owners' testimony.

created a situation similar to cases involving settlement agreements, *see Samra v. Shaheen Bus. & Inv. Grp., Inc.*, 355 F. Supp. 2d 483, 493-94 (D.D.C. 2005), or evidentiary stipulations, *see United States v. Kanu*, 695 F.3d 74, 78 (D.C. Cir. 2012) ("Stipulations, like admissions in the pleadings, are generally binding on the parties and the court."). The Judges should thus exclude the evidence that flows from the Copyright Owners' breach. Indeed, the Judges have authority to enforce the contract bar against the Copyright Owners, just as they would have authority to enforce an evidentiary stipulation. And as in similar cases, specific performance is the proper remedy. The Judges should issue an order "to produce as nearly as is practicable the same effect that the performance due under a contract would have produced." Restatement (Second) of Contracts § 357 cmt. a. Here, that means striking the testimony the Copyright Owners submitted in violation of the contracts.

III. IN THE ALTERNATIVE, THE JUDGES SHOULD ALLOW AMAZON TO SUPPLEMENT ITS WRITTEN DIRECT STATEMENT

If the Judges do not strike the Copyright Owners' rebuttal testimony, they should permit Amazon to submit Mr. Duffett-Smith's attached Supplemental Written Direct Testimony. The Judges have allowed similar testimony when necessary to "ensure a comprehensive record" about purported benchmark licenses. Order Denying Licensee Services' Motion to Strike SoundExchange's Corrected Written Rebuttal Testimony at 11, Dkt. No. 14-CRB-0001-WR

(2016-2020) (*Web IV*) (Apr. 2, 2015) ("*Web IV* Order") (authorizing sur-rebuttal to ensure "a comprehensive record" with "a full written explanation by licensors *and* licensees of th[e] agreements"); *see also* Order Granting in Part and Denying in Part Services' Motion to Strike Copyright Owners' Expert Testimony at 12, Dkt. No. 16-CRB-0003-PR (2018-2022) (Remand) (*Phonorecords III*) (Oct. 1, 2021) (granting leave to file supplemental testimony); Order Granting in Part and Denying in Part Music Choice's Motion to Compel SoundExchange at 4, Dkt. No. 16-CRB-0001 SR/PSSR (2018-2022) (*SDARS III*) (Jan. 23, 2017) (allowing surreply).

As Mr. Duffett-Smith now shows (SWDT at ¶¶ 3, 18-28), Dr. Eisenach is wrong to frame

Eisenach WRT ¶ 114. The Judges should not reward the Copyright Owners for their breach of contract by allowing Dr. Eisenach's inaccurate claim to go unrebutted.

CONCLUSION

The Judges should grant the Motion.

16

See Duffett-Smith WDT ¶¶ 197-210.

May 5, 2022

Respectfully submitted,

/s/ Joshua D. Branson

Joshua D. Branson (D.C. Bar No. 981623) Aaron M. Panner (D.C. Bar No. 453608) Leslie V. Pope (D. C. Bar No. 1014920) Scott Angstreich (D.C. Bar No. 471085) KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, D.C. 20036

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Counsel for Amazon.com Services LLC

Appendix A

Restricted – Subject to Protective Order in Docket No. 21-CRB-0001-PR (2023-2027) (Phonorecords IV)

Omitted from Public Version

Exhibits A-B

Restricted – Subject to Protective Order in Docket No. 21-CRB-0001-PR (2023-2027) (Phonorecords IV)

Omitted from Public Version

Before the UNITED STATES COPYRIGHT ROYALTY BOARD Washington, D.C.

DETERMINATION OF RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (Phonorecords IV))
SUPPLEMENTAL WRITTEN DIRECT TEST	TIMONY OF JAMES DUFFETT-SMITH
1. My name is James Duffett-Smith. C	On October 13, 2021, I submitted written
direct testimony on behalf of Amazon Music. On A	April 22, 2022, I submitted rebuttal testimony.
As I explained in my direct submission, I omitted d	discussion of
	barring the
parties from	in this proceeding. ¹ I
understand the Copyright Owners now say	
	² I further understand that the Copyright
Owners present several calculations based on	, ³ and their expert portrays
	4
2. I submit this supplement to ensure a	complete record about Amazon's
I would have discussed	earlier but for the contractual bar on
doing so. As shown below,	

In the Matter of:

 $^{^1}$ Written Direct Testimony of James Duffett-Smith ("Duffett-Smith WDT") \P 94 n.66.

 $^{^2}$ See, e.g., Written Rebuttal Testimony of David Kokakis ("Kokakis WRT") $\P\P$ 21.

 $^{^3}$ Kokakis WRT ¶¶ 21-22; Written Rebuttal Testimony of Jeffrey A. Eisenach ("Eisenach WRT") ¶¶ 113-19.

⁴ Eisenach WRT ¶ 114.

I believe that contractual terms should be adhered to by parties
that enter into them. Had I known that
I would have included this discussion in my Written
Direct Testimony. The facts below are based on my personal knowledge or on information made
available to me in the course of performing my duties at Amazon Music.
3. This testimony explains that our
Shortly before the <i>Phonorecords III</i> Final Determination, ⁵ we had
I. BACKGROUND
4.

⁵ Final Determination, Dkt. No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*) (Nov. 5, 2018) ("*Phonorecords III* Final Determination").





6. In this supplemental written direct testimony, I focus on Amazon's experience

n r	AMAZONIS		•	13
I.	AMAZON'S 7.			
	7.			

¹² Ex. 319,

¹³ Kokakis WRT ¶ 16.

¹⁴ Ex. 320,

¹⁵ *Id*.

¹⁶ *Id*.

¹⁷ Ex. 323,

8.	1	8
9.		
10.		
A.		
11.		

 $^{-18}$ *Id.* at 2.

²⁰ *Id*.

¹⁹ Ex. 321,

²¹ Ex. 322,





12.		

³¹ *Id.* at 1

³⁴ Ex. 331,

³⁵ Ex. 324,

id. at 1

³⁶ *Id.* at 4-5

see also Initial

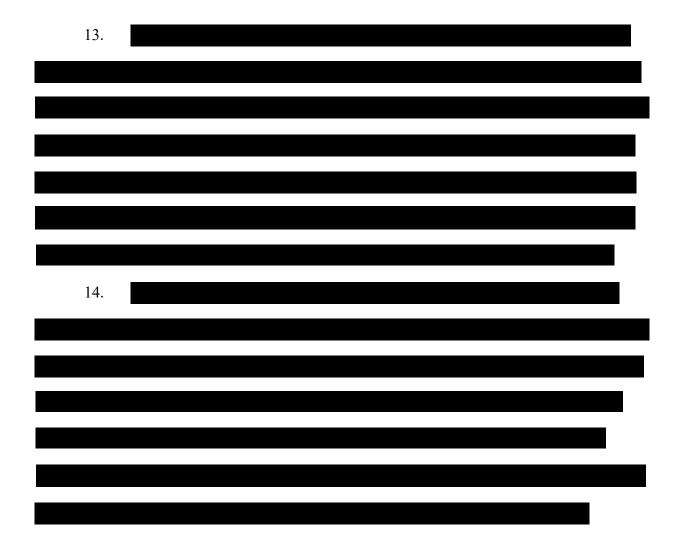
Determination, Dkt. No. 16-CRB-0003-PR (2018-22) (*Phonorecords III*) (Jan. 26, 2018) ("*Phonorecords III* Initial Determination").

³⁸ Ex. 326,

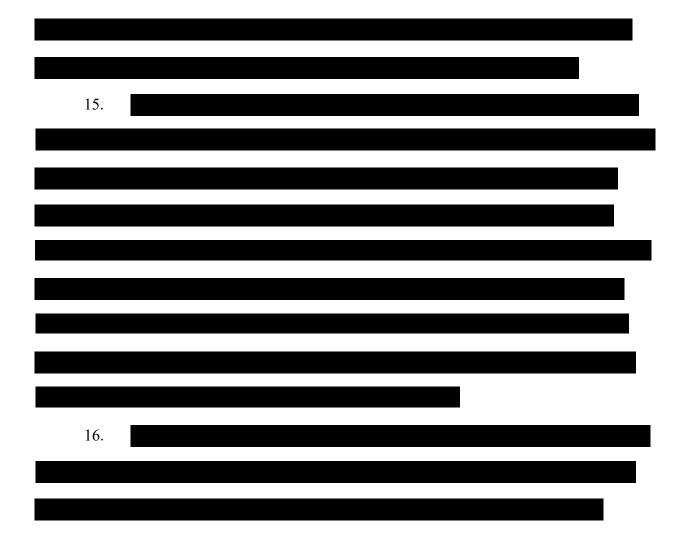
id. at 4-5

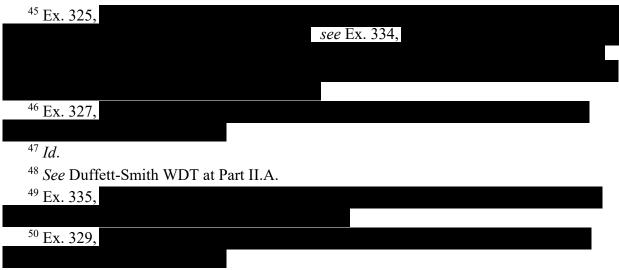
³² *Id.* at 1-2.

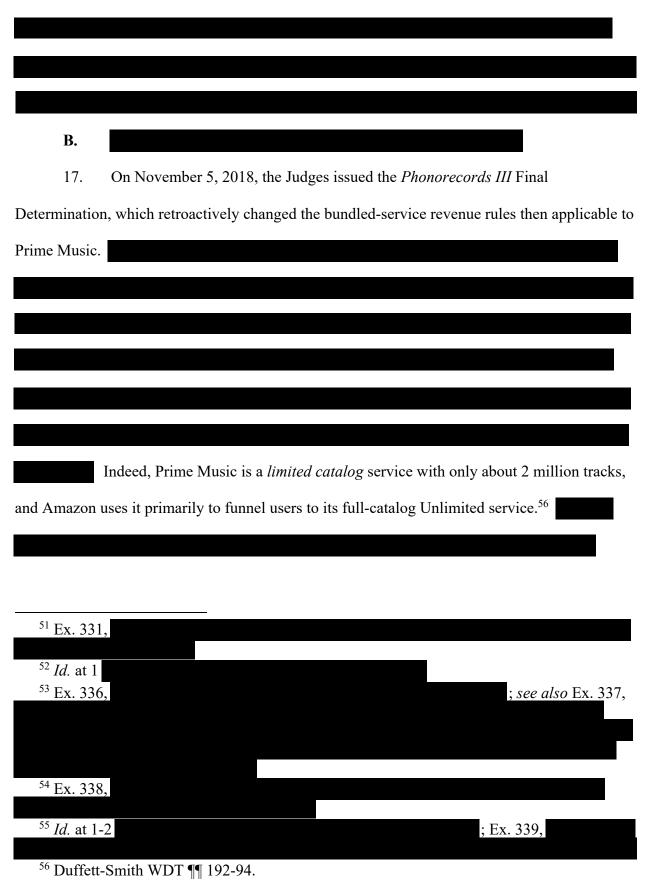
³³ Ex. 330,







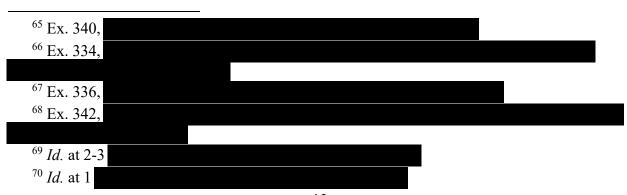




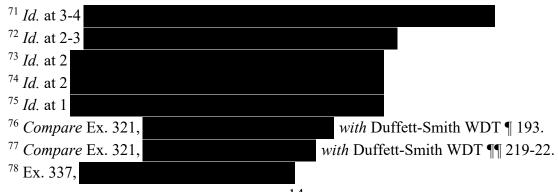
18.	
19.	
⁵⁷ <i>Id.</i> ¶¶ 200-02.	
⁵⁸ Ex. 338,	

20.	
21.	
previously designated as Exhibit 94 to Amazon's Written Direct Statement	
on page 1. I have attached, and refer to, the unredacted version of the	is document on the
understanding that the redactions are not needed if the parties are permitted in this proceeding concerning	to submit testimony
 61 See Duffett-Smith WDT at ¶¶ 195-210. 62 Ex. 341, 	
⁶³ Ex. 336,	
⁶⁴ <i>Id</i> .	





23.		
24.		



25.			
26			
26.			

 $^{^{79}}$ See Eisenach WRT ¶ 113 & Fig. 5.

 $^{^{80}}$ Duffett-Smith WDT $\P\P$ 108-17.

⁸¹ *Id.* ¶¶ 201-07.

27.				
28.				
•				
⁸² Ex. 92, A	MZN_Phono IV_00	0015404		

⁸³ See, e.g., Ex. 343,

29.					
redacted the	rect Statement, a e discussion of t	nd Amazon repl he derstanding that	laced the original. I have attached the redactions a	ed, and refer to, are not needed if	s exhibit with one that the unredacted version
⁸⁵ See E	Ex. 342,				Ex. 342.1,

30.			

⁸⁶ Ex. 320,

⁸⁷ E.g., Ex. 4, AMZN Phono IV 00003062

; Ex. 9, AMZN Phono

IV 00002484

Ex. 23, AMZN Phono IV 00007346

Ex. 24, AMZN_Phono IV_00004918

88 Ex 320

⁸⁹ Written Statement of David Kokakis, Dkt. No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*) (Oct. 28, 2016) ¶ 80.

⁹⁰ Ex. 345,



91 *Id.* at 1
92 *Id.*93 Ex. 321,
94 Ex. 345,

; see Ex. 337,

Ex. 321,

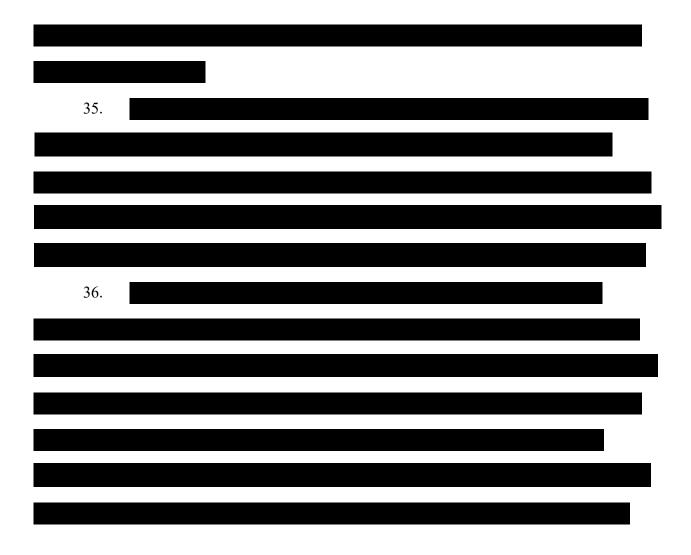
D.			
33.			
34.			
⁹⁵ Ex. 340	 	 	

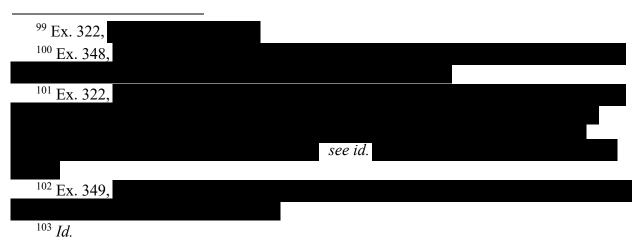
id. at 1

96 See Duffett-Smith WDT ¶¶ 204-209.

⁹⁷ Ex. 347,

⁹⁸ *Id*.





37.			
31.			
	I		
38.			
¹⁰⁴ <i>Id</i> .;	see also Ex. 348,		
¹⁰⁵ Ex.	349,		
¹⁰⁶ Ex.	319,		
¹⁰⁷ Id. a		— B. AMZN Phono IV 00	007346
		7, 7 MVIZAN_1 HOHO 1 V _00	007370
110 <i>Id</i> .	23, AMZN_Phono IV_00007346		

¹¹¹ Duffett-Smith WDT ¶¶ 91-92.

¹¹² See Ex. 321, ; Ex. 322, ; Ex. 319,

Before the UNITED STATES COPYRIGHT ROYALTY BOARD Washington, D.C.

In the Matter of:)	
)	
DETERMINATION OF RATES)	Docket No. 21-CRB-0001-PR
AND TERMS FOR MAKING AND)	(2023-2027)
DISTRIBUTING PHONORECORDS)	
(Phonorecords IV))	
)	

DECLARATION OF JAMES DUFFETT-SMITH

I, James Duffett-Smith, declare under penalty of perjury that the statements contained in my Supplemental Written Direct Testimony in the above-captioned proceeding are true and correct to the best of my knowledge, information, and belief.

Dated: May 4, 2022

James Duffett-Smith

Before the UNITED STATES COPYRIGHT ROYALTY BOARD Washington, D.C.

In the Matter of:)	
)	
DETERMINATION OF RATES) D	ocket No. 21-CRB-0001-PR
AND TERMS FOR MAKING AND) (2	2023-2027)
DISTRIBUTING PHONORECORDS) ·	,
(Phonorecords IV))	
)	

INDEX OF AMAZON.COM SERVICES LLC'S EXHIBITS TO THE SUPPLEMENTAL WRITTEN DIRECT TESTIMONY OF JAMES DUFFETT-SMITH

Exhibit No.	Sponsoring Witness	Description	Restricted/ Public
Amazon Ex. 319	James Duffett-Smith		RESTRICTED
Amazon Ex. 320	James Duffett-Smith		RESTRICTED
Amazon Ex. 321	James Duffett-Smith		RESTRICTED

Exhibit No.	Sponsoring Witness	Description	Restricted/ Public
Amazon Ex. 322	James Duffett-Smith		RESTRICTED
Amazon Ex. 323	James Duffett-Smith		RESTRICTED
Amazon Ex. 324	James Duffett-Smith		RESTRICTED
Amazon Ex. 324.1	James Duffett-Smith		RESTRICTED
Amazon Ex. 325	James Duffett-Smith		RESTRICTED
Amazon Ex. 326	James Duffett-Smith		RESTRICTED
Amazon Ex. 327	James Duffett-Smith		RESTRICTED
Amazon Ex. 328	James Duffett-Smith		RESTRICTED
Amazon Ex. 329	James Duffett-Smith		RESTRICTED
Amazon Ex. 330	James Duffett-Smith		RESTRICTED
Amazon Ex. 331	James Duffett-Smith		RESTRICTED

Exhibit No.	Sponsoring Witness	Description	Restricted/ Public
Amazon Ex. 332	James Duffett-Smith		RESTRICTED
Amazon Ex. 333	James Duffett-Smith		RESTRICTED
Amazon Ex. 334	James Duffett-Smith		RESTRICTED
Amazon Ex. 335	James Duffett-Smith		RESTRICTED
Amazon Ex. 336	James Duffett-Smith		RESTRICTED
Amazon Ex. 337	James Duffett-Smith		RESTRICTED
Amazon Ex. 338	James Duffett-Smith		RESTRICTED
Amazon Ex. 339	James Duffett-Smith		RESTRICTED
Amazon Ex. 340	James Duffett-Smith		RESTRICTED
Amazon Ex. 341	James Duffett-Smith		RESTRICTED
Amazon Ex. 342	James Duffett-Smith		RESTRICTED

Exhibit No.	Sponsoring Witness	Description	Restricted/ Public
Amazon Ex. 342.1	James Duffett-Smith		RESTRICTED
Amazon Ex. 342.2	James Duffett-Smith		RESTRICTED
Amazon Ex. 343	James Duffett-Smith		RESTRICTED
Amazon Ex. 344	James Duffett-Smith		RESTRICTED
Amazon Ex. 345	James Duffett-Smith		RESTRICTED
Amazon Ex. 346	James Duffett-Smith		RESTRICTED
Amazon Ex. 347	James Duffett-Smith		RESTRICTED
Amazon Ex. 348	James Duffett-Smith		RESTRICTED
Amazon Ex. 349	James Duffett-Smith		RESTRICTED
Amazon Ex. 349.1	James Duffett-Smith		RESTRICTED

Exhibits 319-349

Restricted – Subject to Protective Order in Docket No. 21-CRB-0001-PR (2023-2027) (Phonorecords IV)

Omitted from Public Version

Proof of Delivery

I hereby certify that on Thursday, May 05, 2022, I provided a true and correct copy of the Amazon's Motion to Strike, Or in the Alternative to Submit Supplemental Testimony, with Exhibits (PUBLIC) to the following:

Spotify USA Inc., represented by Joseph Wetzel, served via E-Service at joe.wetzel@lw.com

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Google LLC, represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

Copyright Owners, represented by Benjamin K Semel, served via E-Service at Bsemel@pryorcashman.com

Apple Inc., represented by Mary C Mazzello, served via E-Service at mary.mazzello@kirkland.com

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at benjamin.marks@weil.com

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Johnson, George, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at susan.chertkof@riaa.com

Signed: /s/ Joshua D Branson